

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE V.GOPALAGOWDA

WRIT PETITION NO.1304/1992

BETWEEN:

Mr.G.S.Ghouse Pasha,  
Mr.Syed Sanaula, aged  
48 yrs, working as Traffic  
Controller, wrongly design-  
ated as Stand Duty Conductor,  
Token No.311, Arasikere Bus stand,  
KSRTC, Hassan Division,  
Hassan, and residing at Raheem  
Manzil Srinivasanagar,  
Arasikere, Hassan Dist.

By Sri K.Subba Rao, Advocate )

PETITIONER

AND

1. KSRTC, rep by  
Vice Chairman & MD,  
Central Offices,  
K.H.Road, Bangalore-27.
2. The Divisional Controller,  
KSRTC, Hassan Division,  
Hassan.
3. Sri Puttaswamy Reddy,  
major, working as Traffic  
Controller, Hassan Bus stand,  
KSRTC, Hassan Division,  
Hassan.

RESPONDENTS

(By Sri B.B.Mandappa, Adv. for R.1 & 2  
Sri S.G.Bhat, Adv. for R.3 )

This petition filed praying to quash the  
endorsement bearing No.KST:MSN:SS: 5228/91-92  
dated 28-12-1991 vide Annexure-T.

This petition coming on for hearing this  
day the Court delivered the following:

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J U D G M E N T

The petitioner was appointed as a conductor in the respondent-corporation on 14-10-1971. While he was on duty on 20th September 1985, he suffered paralytic stroke and he was referred to the 'Nimhans' Hospital at Bangalore. Again the second stroke was suffered by him on 6-7-1986. For the said reasons he submitted his representation dated 28-3-1986 to the respondent-Corporation requesting the Corporation to consider his request for assigning an alternative post other than the post of conductor. The respondent considering the representation of the petitioner, he has been posted as Stand Duty Conductor with effect from 23-9-1986. He had worked in that capacity up to 17th November 1989. Thereafter, he was removed from the said job and asked him to work as regular conductor. That order came to be challenged before this Court in W.P.No.2633/90. The said writ petition came to be disposed of on 13-7-1990 directing the respondents



not to disturb the petitioner from his stand duty conductor's post and discharge the functions of Traffic Controller, until the finalisation of the seniority list. In pursuance of the said order, he continued as stand duty conductor.

2. The Divisional Controller of the Corporation of Hassan Division has issued a notice dated 15-3-1991 to the petitioner calling upon him to produce the medical certificate to show that he was not in a position to discharge his regular duty as conductor. Medical certificate was produced in pursuance of the said notice. Thereafter as per Annexure-N dated 10-4-1991, the petitioner was allowed to work as stand duty conductor. The said order was given effect to by the respondent-Corporation up to 28-12-1991. Then as per Annexure-T, the respondent-Corporation by an endorsement was informed to the petitioner stating that he had been withdrawn from Bus stand Conductor and asked him to perform the duty as a regular



conductor. This order is impugned in this writ petition on various legal grounds.

3. Learned counsel Mr. Narayana Bhat appearing for the petitioner submits that there is a binding settlement between the workman and the first respondent-Corporation with regard to various service conditions of employees working in the Corporation. He has placed strong reliance on clause - 9 of the said settlement dated 16-2-1996 which reads thus:

"Facility to disabled employee: In the event of disability of the employee while on duty, not warranting removal, he shall be recategorised to an equivalent post carrying similar pay scales, etc., and shall be continued if he is suitable for that post, or in the lower post, if the employee so desires, subject to satisfying all conditions of the KSRTC cadre and Recruitment Regulations, 1968."

He further submits that subsequent to the above settlement, number of settlements have been arrived with the first respondent-Cor-



poration in regard to clause-9 of the said settlement. He has placed strong reliance under the Regulation 3(1)(b) stating that the employee can be recruited to a post by appointing such a person by following methods enumerated under Regulation 3 of the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. According to the learned counsel by transferring a person who is already in service of the Corporation from equivalent cadre or class of post, a post can be filled up. He submits that equivalent to the conductor post, the post of Junior Assistants are available in the respondent-Corporation. Therefore, he submits that as he has been medically disabled to discharge as regular conductor duties on the ground that he had underwent an open heart surgery on 21-4-1994 and in respect of the said averments he had produced the medical certificate issued by the doctor, as per Annexure-W dated 29-10-1994. The doctor while issuing the said certificate has certified stating that "he is fit to do light and sedentary work from 30-11-1994". This fact has not




been disputed by the respondents. Therefore, he submits that the petitioner is entitled for benefit of clause 9 of the settlement referred to above, and this fact was also brought to the notice of the respondent-Corporation, and the respondent-Corporation instead of considering his case as per the said settlement has issued the impugned endorsement which is not sustainable in law. He further submits that the Divisional Controller, Hassan Division has effected promotion to the 3rd respondent, who was not working within the Hassan Division. It would clearly show that the vacant post which was meant for the petitioner has been filled up by promoting a person who was working in different division. It is also further submitted that on various other legal contentions in support of the case of the petitioner are required to be considered by the respondent for recategorisation of the post of the petitioner and if could have granted the relief prayed for him.

4. The respondent-Corporation has not filed counter controverting various petition



averments and the documents produced by the petitioner in support of his case. On the other hand, learned counsel Mr.B.B.Mandappa appearing for the first respondent-Corporation submits that the similar question was considered by this Court in Writ petition No.6375/1997 disposed of on 18-12-1997 and writ petition No.21478-481/1991 disposed of on 11-3-1998, not granting the reliefs sought for by the petitioners in those petitions.

5. Learned counsel for the petitioner placed reliance on the regulation 3(1)(b) of the Regulations and clause 9 of the settlement referred to above. In <sup>the</sup> writ petitions referred to above clause 9 of the settlement dated 16-2-1978 has not been considered and further facts of the case referred to the above writ petitions and the facts of this case particularly in view of the judgment passed by this Court at Annexure-J in the Writ petition 2633/90 and connected matters are entirely different. In fact this Court in W.P.No.6375/1997 has observed <sup>that</sup> ~~to~~ the case of the petitioner in that case that his



representation may be considered for change of such equivalent post or change the cadre of the petitioner to a lower job with pay protection if otherwise permissible, as per Rules. In the writ petition filed earlier by the petitioner referred to above there is a clear direction to the respondent not to disturb the petitioner/petitioners as stand duty Conductors. Apart from the said judgment the medical certificate issued by the doctor clearly establish the fact that the petitioner is not medically fit to discharge the duties of regular conductor post. The doctor issued a certificate recommending <sup>that</sup> the petitioner is not in a fit condition to do work, which facts <sup>are</sup> not controverted by the respondent-Corporation. In view of the facts and medical certificate and clause-9 of the settlement referred to above confer power upon the Corporation to consider the case of the petitioner for change of post as requested by him, as he has been suffering from disability on account of <sup>his</sup> ailment <sup>referred to above</sup> ~~of which he is under-~~ ~~going~~ and particularly with reference to the fact that he is suffering from paralytic stroke

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and also he had underwent an open heart surgery. Therefore, it is a fit case for the respondent-Corporation to consider his case to post him as Traffic Controller to which he is entitled or to continue him in the present stationary duty in accordance with the undertaking given to this Court on the ground of medical disability. Therefore, in my view the petitioner is entitled for the relief sought for in the writ petition~~er~~. Hence the endorsement at Annexure-T dated 28-12-1991 is not sustainable in law and the first respondent-Corporation has not exercised its power as per clause-9 of the settlement. The petitioner is suffering from ailment referred to above, which fact is proved from the medical certificate produced by him. This relevant fact should have been taken into consideration to re-categorise him to a equivalent post carrying with similar pay scales. In this view of the matter, the endorsement at Annexure-T which is impugned in this writ petition is not sustainable in law. Hence I pass the following order.



6. Writ petition is allowed. Rule is issued. Respondent-Corporation is hereby directed to continue <sup>petitioner</sup> ~~him~~ in the present ~~stationary duty~~ <sup>stand duty</sup> ~~Conductor~~ or equivalent to similar job protecting his pay scale and other benefits and it is further directed to the respondent-Corporation to consider his representation with reference to clause 9 of the settlement for granting an equivalent post in accordance with law as per rules and settlement. The petitioner shall be either continued in the present post or assign him an equivalent post till the consideration of his representation by the Corporation.

In the circumstances of the case no costs are awarded.

Sd/-  
JUDGE



Gb/a kc